IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-12334
Filed 5-20-91; 4:05 pm]
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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

[Docket No. 91-067]

### Pink Bollworm; Removal of Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the pink bollworm regulations by removing a portion of Desha County, Arkansas, from the list of suppressive areas, and by removing Arkansas from the list of States quarantined because of the pink bollworm. We have determined that the pink bollworm has been eradicated from Arkansas. The rule we are affirming removes unnecessary restrictions on the interstate movement of regulated articles.

**EFFECTIVE DATE:** June 21, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule published in the Federal Register and effective March 6, 1991, (56 FR 9273-9274, Docket Number 91-015) we amended the pink bollworm regulations (7 CFR 301.52 *et seq.*) by removing a portion of Desha County, Arkansas, from the list of suppressive areas in § 301.52-2a, and by removing Arkansas from the list of States in § 301.52(a) quarantined because of the pink bollworm.

Comments on the interim rule were required to be received on or before May 6, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Desha County in Arkansas. There are nine cotton growers, processors, and seed producers within this area who will experience a modest economic benefit as a result of the interim rule, since they are no longer required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately $100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Arkansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V.)

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.52(a) and 301.52-2a that was published at 56 FR 9273-9274 on March 6, 1991.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 16th day of May, 1991.

Robert Melland,

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 91-12162 Filed 5-21-91; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Parts 3, 103, 240, 274a, and 299

[INS No.: 1400-91; AG Order No. 1495-91]

### Temporary Protected Status

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule implements new section 244A of the Immigration and Nationality Act (the Act), as added by section 302 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, (November 29, 1990), and implements section 303 of IMMACT. The rule sets forth the procedures for applying for Temporary Protected Status (TPS) and provides, in accordance with the

provisions of the Act and IMMACT, an opportunity for eligible individuals temporarily to remain in and to work in the United States, until the end of the period designated by the Attorney General. In addition to the procedures for applying for Temporary Protected Status (TPS), this rule also references those forms and fees that are required as a part of the application process. This rule also contains conforming amendments to other parts of Title 8 of the Code of Federal Regulations.

**EFFECTIVE DATE:** May 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for Immigration Review, suite 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041, telephone number (703) 756–6470; Patricia B. Feeney, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 7048, Washington, DC 20536, telephone number (202) 514–2895; or Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone number (202) 514–5309.

**SUPPLEMENTARY INFORMATION:** On January 7, 1991, an interim rule with request for comments was published in the **Federal Register** at 56 FR 618. The comment period expired on February 6, 1991. The Immigration and Naturalization Service (the Service) received over 1,000 comments, representing the views of alien advocacy organizations, state and Federal Government agencies, Members of Congress, attorneys and individuals. The Service believes that the widest range of opinions has been expressed and greatly appreciates these comments. Each comment has been considered and many commenters will see the effects of their comments in this rule.

Almost all of the commenters stated that the fees to be charged by the program should be reduced and that a "family cap" should be instituted so that the cost of the Program is not prohibitive for large families. Additionally, commenters requested that no fee be charged for re-registration. After review of the comments and fee structure, the Service will maintain the initial registration filing fee for *Alien Address Report Card,* Form I–104, at $75 for nationals of El Salvador but will institute a "family cap" of $225 and will not charge an additional fee for the re-registration process. The family cap will mean that only the first three members of a family who apply for TPS as nationals of El Salvador will be charged the fee. Unmarried children under the age of 21 will be considered part of the family. Applicants will be required to pay the appropriate fee for issuance and extension of employment authorization.

Commenters also complained that the waiver of fees for applications has not been uniformly applied by District Offices and suggested that the regulations be amended to provide guidance to officers. Commenters further suggested that the Service use the economic necessity guidelines in 8 CFR 274a.12(d). The Service is mindful of the fact that some applicants will be unable to pay the prescribed fees. The Service has the authority to waive fees, pursuant to 8 CFR 103.7(c), when an applicant is able to substantiate the inability to pay the prescribed fees. The Service will consider all requests to waive fees and will act favorably when an applicant meets the regulatory requirements. The Service will determine inability to pay using the Public Welfare, Poverty Guidelines as provided in Title 45, Code of Federal Regulations, part 1060.2, which are the same guidelines used in determining economic necessity under 8 CFR 274a.12(d).

One commenter stated that the definitions of felony and misdemeanor should be clarified to state that the crimes refer only to "final" convictions. The definitions cited in this rule are identical to those used in other parts of Service regulations and have not been the source of confusion. The Service will use the definition of conviction as found in 8 CFR 242.2(b). Additionally, the issue of what constitutes a final conviction has been addressed in judicial decisions and, therefore, it is not necessary for the regulations to be amended further.

A few commenters requested that the definition of *prima facie* be changed, deleting the phrase "if unrebutted" and inserting "on its face," because the current definition implies that the Service may delay TPS benefits in order to locate potential rebuttal evidence. The commenters believe that such action is only appropriate when making the ultimate determination of TPS eligibility. Making the change suggested would require the Service to accept the statements made by an applicant, even when the Service has evidence in its possession establishing that the applicant is ineligible for TPS. The Service must be able to use independent evidence, such as a criminal conviction, when making its determination. Therefore, the definition of *prima facie* has not been changed.

Commenters stated that the definition of brief, casual and innocent absence is too subjective. The Service believes the definition must be broad to allow for flexibility. To do otherwise would require the Service to establish a specific time limit, which may cause some applicants to be disadvantaged. Therefore, this portion of the regulation has not been changed.

One commenter suggested that the regulations include a definition of the term "armed conflict," based on the Geneva Convention. The statute gives the Attorney General the authority, in his discretion, to designate any foreign state to be eligible for the TPS program. The purpose of the regulation is to state the requirements for administering the TPS program, not to limit the authority of the Attorney General. Therefore, it is unnecessary to provide a definition as requested by the commenter.

Several commenters suggested that the Service delete references to a District Director having any discretion in the granting of TPS. The commenters believe that there is no discretion to deny TPS if an applicant establishes eligibility based on the requirements of the statute. Another commenter believes that certain language in §§ 240.42(a) and 240.43 of the regulations is misleading and implies that the District Director enjoys special discretionary powers independent of the statute. The Service believes the statute is clear that a decision to grant TPS benefits is a discretionary decision. The phrase "to the satisfaction of the district director," however, has been removed from the sections discussed by the commenter because it is redundant.

Commenters stated that the Service has the authority to issue regulations relating to the dates by which aliens must have arrived in the United States and that the regulations should be promulgated without cut-off dates for arrival. The Service disagrees and believes that section 244A(c)(1)(A)(i) of the Act requires aliens to be physically present in the United States by the effective date of the most recent designation of the state. The effective date of a designation will be determined by the Attorney General as provided in section 244A(b)(2)(A) of the Act. No change has been made to § 240.2(b) of the regulations.

One commenter suggested that waivers of grounds of ineligibility should always be granted on humanitarian grounds, unless the individual is also ineligible or excludable on a non-waivable ground. The Service believes that discretion should be exercised on a case-by-case basis. Adopting the commenter's suggestions would take discretion away from the Service. Another commenter stated that no separate waiver

application should be required. Since a case-by-case determination must be made, an application is required. This is to the applicant's benefit since the application gives the applicant the opportunity to provide a detailed explanation of the reasons a waiver should be granted.

One commenter questioned at what point the Service would inform an applicant that he or she will need a waiver to obtain TPS. The Service will notify an applicant of the need for a waiver application when the determination is made that a waiver is necessary. This is a practical issue that does not need to be addressed in the regulations.

One commenter stated that the provisions of § 240.3(b) merely track the statute verbatim and, therefore, are virtually worthless. The commenter believes there is no guidance provided to such persons as applicants, attorneys, etc. The Service maintains that the regulation is sufficiently broad to allow for discretion to be used in a decision on a waiver. Further guidance would only serve to limit discretion, possibly to the detriment of an applicant.

Commenters stated that temporary treatment benefits should be issued immediately upon the completion of an application which, on its face, establishes the alien's eligibility. The Service agrees that temporary treatment benefits should be issued immediately after the applicant establishes his or her *prima facie* eligibility. As noted above, the Service must be able to make use of evidence that effectively rebuts the alien's claim to eligibility. Therefore, this portion of the rule has not been changed.

Commenters contended that the TPS program should be similar to the Extended Voluntary Departure (EVD) Program and should, therefore, not require an application process, i.e., should not have special forms, documents or fees. The commenters point to the fact that the statute deliberately uses the term "registration." The Service disagrees. The statute specifically requires the Attorney General to establish a procedure for registration. Nothing in the statute prohibits the use of any specific forms or documents. Additionally, section 244A(c)(1)(B), of the Act expressly permits the Attorney General to require payment of a registration fee and section 303 of IMMACT requires a fee for registraton for nationals of El Savador. Therefore, the Service has not changed this portion of the rule.

Commenters stated that the forms required by the regulations request some of the same information repeatedly, as well as information wholly unrelated to a determination of eligibility. Additionally, one commenter asserted that the registration process is overly burdensome and suggested that the Application for Employment Authorization, Form I–765, should be required only for those applicants wishing to work. The Service is in the process of revising and combining the required forms and will take commenters' suggestions during this process. Additionally, commenters should be aware that Form I–765 is used in connection with the computer system supporting the TPS Program and that the fee is used to offset the cost of the program. This necessitates the use of Form I–765 for all applicants. The fee for Form I–765 will be charged only for those aliens who are nationals of El Salvador, are between the ages of 14 and 65 (inclusive), and are requesting work authorization.

Commenters suggested that an alien from a country that is designated for TPS, who is also in deportation proceedings, should be given a notice of the TPS Program. The Service agrees with the commenters and has amended § 240.7(d) to reflect the requirement that an alien who is in proceedings and is a national of a country designated under the program will be given notice of the requirements and benefits of the program.

One commenter suggested that the regulations should clearly state that Qualified Designated Entities (QDES) and voluntary agencies (VOLAGS) are not accredited by the Board of Immigration Appeals under 8 CFR 292.1 and are not therefore permitted to represent TPS applicants during any examination by the Service. QDES and VOLAGS provide assistance to aliens in filling out the forms required by the program. In many instances, these organizations have close ties to the alien community and provide valuable services to the community. Without them, many aliens would not have the access needed to obtain the benefits to which they are entitled. The regulations concerning accredited representatives are very clear. Since many QDES and VOLAGS have accredited representatives on their staff, they would have the right to represent an applicant. Therefore, no addition has been made to this portion of the rule.

Commenters stated that the Service has no legal basis to bar representatives from participating directly in the examination of an alien seeking TPS benefits and should strike the sentence in § 240.8 precluding direct participation. Commenters argued that since the application process may result in the institution of deportation proceedings, it is important that representatives be allowed to participate in the interview. The Service disagrees that the applicant would be disadvantaged in any way by this portion of the regulations. Nothing in the regulations precludes an attorney from providing his or her client with representation. In interviewing the applicant, the Service has the right to expect that the applicant respond and to maintain control over the interview. This regulation balances the needs of the Service in the adjudicative process with those of the applicant and his or her representative, and it has not been changed.

One commenter suggested that the appearance of children under the age of 14 should be waived when the child is applying with a parent. Section 240.8 states that the appearance of the applicant may be required. Nothing in this section requires the appearance of children, unless it is requested by the District Director. It is unnecessary to change this portion of the regulations.

Commenters stated that, under § 240.9(a)(2)(i), employers are required to meet a higher standard than other individuals or organizations when providing documentation for the TPS applicant to establish proof of residence. The Service believes that a higher standard is required of an employer since this type of documentation is the most common type of document received and generally is the most reliable document an alien can submit. This regulation does not preclude the Service from accepting documents without the requisite attestation under penalty of perjury. Such documents will be evaluated individually and given appropriate weight. The Service intends to be very flexible with regard to the acceptance of documentation establishing an applicant's residence in the United States. The Service does agree with commenters that the requirement that an employer state his or her willingness to come forward and give testimony is unnecessary. The Service has the right to subpoena individuals and documents and would exercise that right if necessary to substantiate documentation submitted in support of an application. Therefore, the requirement that a letter from an employer state the employer's willingness to testify has been removed.

Commenters argued that the documentation requirements for evidence of identity and nationality are too onerous and should not require proof of unsuccessful efforts to obtain documents. Commenters pointed out that attempting to obtain the

documentation or evidence of an unsuccessful effort may endanger a prospective registrant and can be extremely time consuming. The Service understands the comments but believes that since the cornerstone of the TPS provision is the applicant's nationality, the Service must have the flexibility to require whatever documentation is necessary to establish such nationality. The regulations provide this flexibility but do not require the submission of proof of unsuccessful efforts to obtain documents in every case. Where primary documentary evidence is unavailable, the Service will require a personal interview of the applicant and an affidavit attesting to unsuccessful efforts to obtain identity documents, explaining why the consular process is unavailable and affirming of his or her nationality. Other credible evidence may be submitted at the time of the interview. This portion of the rule has been modified to set forth the requirements of the application more clearly.

Commenters stated that the Service should be flexible in the types of documentation accepted to show nationality and that three additional types of documents should be added to the list of acceptable evidence: (1) An Order to Show Cause or other Service document alleging nationality; (2) any church record that indicates birthplace or nationality such as baptismal, marriage or divorce certificates; and (3) any other relevant document, affidavit or other credible evidence, including school records and correspondence. Nothing in the regulations precludes the submission of any type of credible document or affidavit. Specifically, the regulations allow for the submission of any "other credible evidence." The list provided in the regulations is not an exclusive one but is offered to provide guidance on the types of acceptable documentation. Additionally, the Service will examine its records in the adjudication of an application for TPS status and may use any documents in its possession in the determination of eligibility. The wording of the regulation already allows for the flexibility requested by commenters and has not been changed.

Commenters requested that § 240.9(a)(2) be amended to read "evidence * * * may consist of *any* of the following." As noted above, the Service intends to be flexible when accepting documents for this program and has amended the regulation as suggested by commenters to clarify that any evidence can be submitted and will be considered.

Commenters also suggested that there should be a presumption of continuous residence for those applicants with pending court proceedings or an asylum application before the Service. As noted above, the Service intends to be very flexible with regard to the type of documents it accepts and will examine its records in processing of a TPS application. The Service must be able to give whatever weight it deems appropriate to the documentation available and should not be required to make presumptions simply because the applicant is involved in proceedings or has submitted another type of application to the Service. The Service will consider these factors in its determination but should not be bound by the suggested constraint. Therefore, this additional requirement has not been added to the rule.

Commenters stated that § 240.9(c) is ambiguous and that any period of less than 30 days is an unreasonably short period of time to respond to a request for information or to show good cause for failure to appear for a scheduled interview. Although the Service generally provides 30 days to respond to such requests, there may be circumstances where a shorter time frame is appropriate. The Service must have the ability to control its work flow and must remain flexible when requiring an applicant to respond to a Service request. Therefore, the Service has not changed the language in § 240.9(c).

Commenters stated that the regulations should allow for a motion to reopen a TPS application denied on the basis of an untimely response or a failure to appear where good cause exists. Nothing in the regulations precludes the filing of a motion to reopen pursuant to 8 CFR 103.5. Since the provisions for such a motion are provided in another section of the regulations, changes to 8 CFR 240 are unnecessary.

Commenters contended that § 240.9(b) implies that affidavits will not suffice to meet the applicant's burden of proof and also argued that it makes no sense to list types of evidence sufficient to demonstrate eligibility but then to add a provision allowing the Service to dictate what must be submitted. Commenters suggested that the regulations be amended to clarify that clear, consistent and detailed written statements from applicants are sufficient to meet the applicant's burden. As previously stated, the Service intends to be flexible in considering all documents submitted, including written statements. However, the Service will require independent evidence of the applicant's eligibility apart from his or her own statements. The Service will accept all evidence submitted by an applicant and will weigh the totality of the evidence submitted when deciding a case. The Service agrees with the commenters that it is unnecessary to state that the applicant must provide proof of eligibility in the form requested by the Service and believes that 8 CFR 103.2(b) is controlling in regard to documentary requirements. Therefore, the last sentence of § 240.9(a)(3) has been deleted. The Service has also amended § 240.9 to clarify that documentation other than that listed in § 240.9(a)(1) can be submitted to establish eligibility for TPS.

Commenters stated that § 240.10(c), relating to the denial by the District Director, omits specific information regarding the form, fee, process and content of notices of appeal. Additionally, commenters stated that § 240.10(c) should be amended to state that denial decisions must be made by personal service and that the applicant has 30 days from the receipt of denial to submit a notice of appeal. The TPS application process is governed by the rules for any other application. Nothing in current regulations requires the Service to make denials of applications by personal service. Therefore, this additional requirement has not been included for TPS. The provisions of 8 CFR 103 are controlling concerning forms, fees and notices. Accordingly, the reference to a time limit to file an appeal has been removed from this regulation.

Commenters argued that the provisions in § 240.10(c) (1) and (2) should be deleted because section 244A(b)(5)(B) of the Act requires an administrative review of all denials. Additionally, commenters stated that TPS applicants must be given the opportunity to perfect an administrative appeal before being subject to deportation proceedings. The statute requires that an alien not be precluded from asserting protection in deportation proceedings. The Service believes an alien can be placed in deportation proceedings at any time. Administrative review of the decision in deportation proceedings is available by the Board of Immigration Appeals. Therefore, an alien has access to administrative review and this portion of the rule has not been changed.

Commenters stated that § 240.10(c) should be amended to require that the Service provide for both written and oral notice of appeal rights where the decision to deny TPS is made at a TPS interview. The language of the statute does not specify the manner for

providing notice. As a policy matter, the Service intends to notify applicants in writing as well as orally, when practical, but has not changed this regulation.

Commenters suggested that the provisions in §§ 240.10(c)(1), 240.10(d)(2) and 240.14(d), requiring the issuance of a charging document after denial of a TPS application, be deleted and that the institution of exclusion or deportation proceedings should not be based solely on the information obtained from the TPS application. The TPS program is not a Legalization Program. In that program, information from the application could be used only to adjudicate the application and prosecute for fraud. Congress did not provide this specific limitation of information obtained through the TPS Program. The Service, therefore, believes that the information provided on the application can be used to issue a charging document. This belief is affirmed by the provisions of section 303(d) of IMMACT, relating to El Salvadoran nationals. That section requires that an Order to Show Cause be issued at the time of the final registration under the TPS Program. It is, therefore, evident that the Service has the authority to institute proceedings upon the denial, withdrawal or expiration of TPS and, therefore the regulation has not been amended in this respect.

One commenter suggested that the regulations should clarify whether an appeal should be filed with the District Director having jurisdiction over the denied TPS applicant's current place of residence or with the District Director who denied the application. The Service agrees that the § 240.10(c) was unclear and has changed that section to indicate that the notice of appeal should be filed with the District Director who denied the application. Since the District Director who issued the denial has the administrative record and also has the responsibility for forwarding the record to the appeals unit, it would not be appropriate or expedient to appeal to a District Director at a different location.

Several individuals commented that § 240.10(f)(1) provides that the Employment Authorization Document (EAD) will be the only documentation evidencing TPS but that the Service does not issue EAD's to minor children or persons over 65. The Service intends to issue Form I–688B, Employment Authorization Document, to all those applicants granted employment authorization. This document will also serve as proof of alien registration. For children under 14 years of age, persons over 65 and those individuals not requesting employment authorization, the Service will issue Form I–94 as proof of alien registration and TPS. The regulation has been changed to clarify the Service's procedures.

Commenters also stated that § 240.10(f)(2) should be amended to provide for both written and oral notice of rights and responsibilities for those applicants granted TPS. The Service intends, as a matter of policy, to provide oral notification when practical.

Commenters stated that aliens granted TPS should be allowed to adjust status in the United States, regardless of how they entered the United States. While section 245(c)(2) of the Act, requiring maintenance of lawful status, has been made inapplicable to aliens granted TPS, there is no corresponding change in the requirements of section 245(a) of the Act. Section 245(a) provides that, in order to be eligible to adjust, the alien must have been "inspected and admitted or paroled into the United States". An alien who entered the United States without inspection cannot satisfy this requirement and, therefore, would not be eligible to adjust. The Service believes the regulations are clear on this point and will not be changed.

Commenters also suggested that the notices given to TPS applicants should specifically state the 30-day re-registration beginning and ending dates. The Service believes that the expiration date of the applicant's alien registration document will serve as ample reminder of the applicant's responsibilities to reregister. This is especially true since the applicant is required to carry this document with him or her at all times. Additionally, providing a notice with the expiration date, which would have to be handwritten, increases the chances of errors in the dates and confusion to the applicant. Therefore, the commenters' suggestion has not been adopted.

Commenters stated that the contents of the notice to applicants should be published in the **Federal Register**, giving the public an opportunity to comment. The notice to applicants is a straightforward statement of the applicant's rights and responsibilities as provided by the statute. Because of the nature of this notice, the Service believes it is not necessary to offer this notice for public comment. Additionally, this requirement would be administratively burdensome and may result in a delay in applicants receiving the required information.

Commenters also stated that the notice to applicants should include a note that the release from detention is a statutory benefit. The statute specifically provides that an alien provided TPS shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States. This requirement does not preclude the Service from detaining an alien on grounds that make the alien ineligible for TPS. Including the notice suggested by commenters may cause confusion and imply additional rights not provided for by the statute.

One commenter requested that the notice to TPS applicants should include a statement that the withdrawal of TPS status "may result in the institution of exclusion or deportation proceedings" rather than "may result in the alien's deportation from the United States." Section 240.10(f)(4)(iii) of the regulation specifically provides for this notice. The suggested language of the commenter is not totally accurate, as, for example, where an alien is already in deportation or exclusion proceedings. Therefore, this portion of the rule has not been changed.

Commenters stated that a TPS applicant should be able to supplement an incomplete application prior to denial and that a notice of intent to deny should be issued prior to denial where the denial would be based on insufficient evidence. As a practical matter, the Service routinely gives an applicant additional time to provide documentation when a determination is made that the documentation can be obtained. This practice benefits both the applicant and the Service. The Service retains the right to make this determination. A notice of intent to deny is appropriate only to notify the applicant of derogatory information unknown to the applicant. The provisions of 8 CFR 103.2(b)(3)(i) are controlling in these instances. It is not necessary, therefore, to change the rule in this instance.

Commenters requested that the period for an alien to respond to a notice of withdrawal of status be increased from 15 to 30 days. The Service agrees with commenters and has amended § 240.14(b) accordingly.

One commenter objected to the provisions of § 240.14(d) that permit a charging document to constitute notice that an alien's status in the United States is subject to withdrawal. The commenter suggested that, if the purpose of the regulation is to allow the charging document alone, without further explanation, to be the notice of the Service's intent to withdraw TPS, a brief statement should be added to the charging document stating that, if the allegations are true, the alien is ineligible for TPS and his or her status is subject to withdrawal. An alien in

exclusion or deportation proceedings, after an initial grant of TPS, is entitled to a *de novo* determination of eligibility for TPS. Because of the nature of the hearing, the Service believes it is not necessary to add additional statements. The immigration judge will review the alien's eligibility for benefits and will issue an order based on the findings after a hearing. That order would necessarily contain a discussion of the alien's eligibility. The Service has reviewed the section discussed by the commenter and determined that it is redundant with the provision in § 240.18 and has, therefore, deleted § 240.14(d).

Commenters suggested that the standards for granting advance parole should be liberal and further suggested that the standards should be the same as provided in the Service's Operating Instructions, 212.5(c), including allowing travel for any *bona fide* business or personal reason. Section 240.15 has been amended to remove the reference to § 212.5(e) which does not relate to advance parole. Language has been substituted to indicate that advance parole will be granted in the discretion of the District Director. This change will require the District Director to use the standards set forth in the Operating Instructions.

Commenters stated that the Service should cease requiring a Social Security number on any TPS application since aliens will be exposing themselves to possible criminal prosecution for use of false Social Security numbers. Additionally, commenters stated that the regulations should be amended to require that an agency receiving information provided by the applicant should have procedures to guarantee the confidentiality of the information, especially as it relates to employers, and that the information should not be disclosed to the government of the designated country. The Service requires the Social Security number for identification purposes and to corroborate documentation submitted with that number. Therefore, the Service will continue to request the number. While the Service will not routinely use the information on a TPS application to institute sanction actions against employers, the Service reserves the right to enforce the Act whenever it is in the public interest to do so. The Freedom of Information and Privacy Acts control the release of third party information. Therefore, it is not necessary to include the suggestions of commenters concerning the release of TPS information to other Federal agencies or to foreign governments.

One commenter stated that § 240.18 should be amended to provide that all waiver issues must be decided prior to the issuance of an Order to Show Cause (OSC). The Service believes that the alien's rights to a full adjudication of TPS eligibility are protected in the manner in which the regulations are currently constructed. Changing the regulations may cause a situation where the Service would be precluded from issuing an OSC where an alien has not filed a waiver. Therefore, the regulations have not been changed on this point.

One commenter stated that the provisions in § 240.18 (a) and (d) are unnecessarily complicated, with indirect references to other sections of the regulations. The Service agrees and has changed the regulation to provide for more clear references.

One commenter believed that § 240.46 should be amended so that emergency and extenuating circumstances beyond the control of the alien would constitute an additional ground for authorizing advance parole, not an additional condition required for parole. The Service disagrees and believes that section 303(c)(4) of IMMACT requires Salvadoran nationals to show emergency or extenuating circumstances before being granted the benefit of advance parole. This portion of the rule has not been changed.

One commenter stated that the regulations should provide a *de novo* determination by the Board of Immigration Appeals (BIA) of a TPS denial for those individuals in pending cases before the BIA since the aliens would not have the right to such a determination under the current regulations. An alien in proceedings before the BIA will have a *de novo* determination of a denial either by a remand from the BIA to the Immigration Judge or by the alien filing an appeal to the Administrative Appeals Unit (AAU). For example, an alien who has been found deportable on a charge which also makes him or her ineligible for TPS (i.e. criminal conviction) would have the case remanded to the Immigration Judge for a *de novo* determination of eligibility for TPS. Therefore, no original jurisdiction before the BIA is necessary.

Although no comments were received from the public on this point, section 240.47 is being amended to reflect that an alien can be placed in exclusion proceedings, in addition to deportation proceedings. This change is consistent with the definition of "charging document" which refers to both exclusion and deportation documents. The change will also ensure that there is no misunderstanding and that the regulation does not seem to convey the right of a deportation hearing to an alien who properly belongs in exclusion proceedings.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are provided in 8 CFR 299.5, Display of control numbers.

**List of Subjects**

*8 CFR Part 3*

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

*8 CFR Part 103*

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

*8 CFR Part 240*

Administrative practice and procedure, Immigration.

*8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

*8 CFR Part 299*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending parts 3, 103, 274a, and 299 and creating a new part 240 which was published at 56 FR 618–624 on January 7, 1991 is adopted as final with the following changes:

## PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

1. The authority citation for part 240 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1254a, 1254a note.

**§ 240.1 [Amended]**

2. Section 240.1 is amended by adding in the definition of the term "Charging document" the phrase ", Form I–221S (Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien)" immediately before the phrase "or Form I–122"; and by removing the definition of "Service".

**§ 240.2 [Amended]**

3. Section 240.2(a) is amended by adding the phrase ", as defined in section 101(a)(21) of the Act," after the phrase "Is a national".

**§ 240.4 [Amended]**

4. Section 240.4(a) is amended by adding the phrase ", as defined in section 240.1," after the phrase "two or more misdemeanors".

**§ 240.5 [Amended]**

5. Section 240.5(a) is amended by adding in the third sentence, the phrase ", if granted," after the phrase "Temporary treatment benefits" and by adding in that same sentence the phrase "or a waiver is sought" after the phrase "fee is paid".

**§ 240.6 [Amended]**

6. Section 240.6 is amended by removing in the second sentence the phrase "proper fee", adding in its place the phrase "the fee as provided in § 103.7 of this chapter," and by removing the period at the end of that sentence and adding the phrase ", except that the fee for Form I–765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization.".

7. Section 240.7(d) is amended by revising the first sentence and adding a new sentence immediately after the first to read as follows:

**§ 240.7 Filing the application.**

* * * * *

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a state is designated under section 244A(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the district director under § 240.7(a) during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under § 240.3(c) or 240.4. * * *

**§ 240.8 [Amended]**

8. Section 240.8 is amended by adding to the last sentence the phrase "the application ," after the phrase "shall consist of."

9. Section 240.9 is amended as follows:

a. In paragraph (a)(1) introductory text in the first sentence, by adding immediately before the period at the end of the sentence the phrase ", if available", and by adding after the first sentence three new sentences;

b. In paragraph (a)(2) introductory text by adding the phrase "any of" after the phrase "may consist of";

c. In paragraph (a)(2)(i) introductory text by removing, at the end of the third sentence, the phrase ", and shall state the employer's willingness to come forward and give testimony if requested by the Immigration and Naturalization Service";

d. In paragraph (a)(3) by removing the second sentence; and

e. In paragraph (c) by removing, in the first sentence, the term "constitute" and inserting the phrase "be deemed" to read as follows:

**§ 240.9 Evidence.**

(a) * * *

(1) * * * If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. * * *

* * * * *

10. Section 240.10 is amended by:

a. Adding in paragraph (c) in the first sentence, immediately following the phrase "to deny Temporary Protected Status" the phrase ", a waiver of grounds of inadmissibility,";

b. Removing in the second sentence of paragraph (c) the phrase ", within fifteen (15) days,";

c. Revising the third sentence of paragraph (c);

d. Removing the term "denied" and replacing it with the term "dismissed" in paragraph (d) introductory text;

e. Adding to the beginning of the sentence the phrase "If the appeal is dismissed by the AAU," and replacing the capital "T" in the word "The" with a lower case "t" in paragraph (d)(2);

f. Removing the phrase "Immigration Court" and replacing it with the phrase "Office of the Immigration Judge" in paragraph (d)(3);

g. Revising paragraphs (e)(1) introductory text and (f)(1) and introductory text in paragraph (f)(2);

h. Removing the phrase "while in" and adding in its place the word "under" in paragraph (f)(3);

i. Revising paragraph (f)(4)(ii);

j. Removing after the phrase "paragraphs (f)(4)(i)" the word "and" and by adding in its place the word "or", and by adding immediately following the phrase "including work authorization" the phrase "granted under this Program" in paragraph (f)(4)(iii) to read as follows:

**§ 240.10 Decision by the District Director or Administrative Appeals Unit (AAU).**

* * * * *

(c) * * * To exercise such right, the alien shall file a notice of appeal, Form I–290B, with the district director who issued the denial. * * *

* * * * *

(e) *Grant of temporary treatment benefits.*

(1) Temporary treatment benefits shall be evidenced by the issuance of an employment authorization document. The alien shall be given, in English and in the language of the designated state or a language that the alien understands, a notice of the registration requirements for Temporary Protected Status and a notice of the following benefits:

* * * * *

(f) *Grant of temporary protected status.*

(1) The decision to grant Temporary Protected Status shall be evidenced by the issuance of an alien registration document. For those aliens requesting employment authorization, the employment authorization document will act as alien registration.

(2) The alien shall be provided with a notice, in English and in the language of the designated state or a language that the alien understands, of the following benefits:

* * * * *

(4) * * *

(ii) The alien must register annually with the District Office having jurisdiction over the alien's place of residence; and

* * * * *

**§ 240.11 [Amended]**

11. Section 240.11 is amended by removing in the first sentence the word "to" after the phrase "If a charging document is served" and adding in its place the word "on".

**§ 240.12 [Amended]**

12. Section 240.12(a) is amended by removing the phrase "for the foreign state involved" and adding the words "the state's" after the phrase "during the initial period of".

13. Section 240.14 is amended by:

a. Removing in paragraph (b)(1), in the first sentence, the phrase "in person or by mail to the alien's most recent address provided to the Service" and adding in its place the phrase "by personal service pursuant to § 103.5(a) of this chapter";

b. Removing in paragraph (b)(1) both references to "fifteen (15) days" and adding, in their place, references to "thirty (30) days";

c. Adding in paragraph (b)(3) a new sentence at the end of the paragraph; and

d. Removing paragraph (d) to read as follows:

**§ 240.14 Withdrawal of Temporary Protected Status.**

* * * * *

(b) * * *

(3) * * * Temporary Protected Status benefits will be extended during the pendency of an appeal.

* * * * *

**§ 240.15 [Amended]**

14. Section 240.15 is amended by:

a. Adding in paragraph (a) at the end of the third sentence the phrase "pursuant to the Service's advance parole provisions" and by removing the fourth sentence; and

b. Adding in paragraph (b) immediately following the phrase "prior to the alien's departure" the phrase "from the United States" and by adding immediately following the phrase "and or institution" the phrase "or recalendering".

15. Section 240.17 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 240.17 Annual registration.**

(a) Aliens granted Temporary Protected Status must register annually with the District Office having jurisdiction over their place of residence. Such registration will apply to nationals of those countries designated or redesignated for more than one year by the Attorney General pursuant to section 244A(b) of the Act. Registration may be accomplished by mailing or submitting in person, depending on the practice in place at the District Office, completed Forms I–821 and I–765 within the thirty (30) day period prior to the anniversary of the grant of Temporary Protected Status (inclusive of such anniversary date). Form I–821 will be filed without fee. Form I–765 will be filed with fee only if the alien is requesting employment authorization. Completing the block on the I–821 attesting to the continued maintenance of the conditions of eligibility will generally preclude the need for supporting documents or evidence. The Service, however, reserves the right to request additional information and/or documentation on a case-by-case basis.

(b) Unless the Service determines otherwise, registration by mail shall suffice to meet the alien's registration requirements. However, as part of the registration process, an alien will generally have to appear in person in order to secure a renewal of employment authorization unless the Service determines that employment authorization will be extended in another fashion due to operational need. The Service may also request that an alien appear in person as part of the registration process. In such cases, failure to appear without good cause shall be deemed a failure to register under this chapter.

* * * * *

**§ 240.18 [Amended]**

16. Section 240.18 is amended by:

a. Removing in paragraph (a) the reference to "§ 240.10(c)(1)" and adding in its place the reference "§§ 240.3(c) and 240.4";

b. Adding in the fourth sentence of paragraph (a) a period "." after the phrase "subject to withdrawal" and removing, immediately thereafter the word "and" and capitalizing the word "a";

c. Adding in the last sentence of paragraph (a) immediately following the term "exclusion" the phrase "against an alien granted Temporary Protected Status";

d. Adding in the first sentence of paragraph (b) immediately after the term "document" the phrase "by the Service" and by adding in the same sentence immediately after the term "administrative" the phrase "adjudication or"; and

e. Removing in paragraph (d) the phrase "paragraph (a) of this section and whose Temporary Protected Status has been withdrawn" and adding in its place the phrase "§§240.3(c) and 240.4".

**§ 240.41 [Amended]**

17. Section 240.41 is amended by adding the phrase "not authorized by the Service (e.g., under advance parole)," after the words "Any departure," in the definition of the term *Continuously physically present.*

**§ 240.42 [Amended]**

18. Section 240.42(a) is amended by removing the phrase "to the satisfaction of the district director,".

**§ 240.43 [Amended]**

19. Section 240.43(a) is amended by removing the phrase "to the satisfaction of the district director".

20. Section 240.46 is revised to read as follows:

**§ 240.46 Travel abroad.**

Permission to travel abroad shall be granted under § 240.15 if the alien demonstrates to the satisfaction of the district director that emergency and extenuating circumstances beyond the control of the alien require the departure of the alien for a brief, temporary trip abroad.

21. Section 240.47 is amended by adding the phrase in the first sentence "exclusion or" after the phrase "establishes a date for" and revising paragraph (b) to read as follows:

**§ 240.47 Departure at time of termination of designation.**

* * * * *

(b) If an alien provided with a charging document under paragraph (a) of this section fails to appear at such exclusion or deportation proceedings, the alien may be ordered excluded or deported in absentia as provided for under section 236 or 242(b) of the Act.

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

21. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

22. Section 103.7(b)(1), Form I–104, is amended by revising the second sentence and by adding a third sentence at the end of the paragraph to read as follows:

**§ 103.7 Fees.**

* * * * *

(b) * * *

(1) * * *

Form I–104. * * * Each application shall be submitted with, for applicants who are nationals of El Salvador, a fee of seventy-five dollars ($75.00); for applicants who are nationals of another state, the fee, not to exceed fifty dollars ($50.00), determined in the Attorney General's designation of such other state. The maximum amount that will be charged a family (husband, wife, and any unmarried children under 21 years

of age) applying for Temporary Protected Status as nationals of El Salvador shall be two hundred twenty-five dollars ($225.00).

* * * * *

## PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

23. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

24. In section 274a.12, paragraph (a) is amended by adding a concluding sentence after paragraph (a)(12) to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

(a) * * *

Any alien within a class of aliens described in paragraphs (a)(3) through (a)(8), and (a)(10) through (a)(12) of this section, who seeks to be employed in the United States must apply to the Service for a document evidencing such employment authorization.

* * * * *

Dated: May 14, 1991.

**Dick Thornburgh,**

*Attorney General.*

[FR Doc. 91–12098 Filed 5–21–91; 8:45 am]

BILLING CODE 4410–10–M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 101

### Loans to State and Local Development Companies; Delegation of Authority

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** This rule increases the overall project size for which Certified Development Company debenture guarantees may be approved by certain SBA officers. Specifically, this rule increases the field offices' authority to approve projects from $2 million to $3 million, from $1.5 million to $2 million, and from $1 million to $1.5 million, respectively, depending upon the SBA official involved. This change will permit certain projects to be approved at SBA Field Offices, where adequate resources exist to conduct necessary reviews on a timely basis. In order to fully implement this change it is necessary to amend SBA's regulations pertaining to both business loans and development company loans.

**EFFECTIVE DATE:** May 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** LeAnn M. Oliver, Deputy Director for Program Development, Office of Economic Development, (202) 205–6485, Small Business Administration, 409–3rd Street, SW., 8th Floor, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Prior to November 15, 1990, Section 502(2) of the Small Business Investment Act limited the amount of loans SBA could make to a local development company under that section to $750,000. Public Law 101–574 raised the limit in certain cases to $1,000,000. Such cases are designed to achieve specific policy goals including business district revitalization, expansion of exports, expansion of minority business development, rural development, enhanced economic competition, changes necessitated by Federal budget cutbacks, and business restructuring arising from Federally mandated standards affecting the environment or working health and safety.

Pursuant to section 503 of the Small Business Investment Act, certified development company debentures provide a percentage of the total project cost, typically the lesser of 40% or the maximum allowable dollar amount (13 CFR 108.503–9(a)(8)).

To meet the above needs it is necessary to amend SBA's regulations in 2 places: (1) Pertaining first to SBA's guaranteed loan authority under section 7(a)(13) of the Small Business Act, and; (2) SBA's development company program authorized under the Small Business Investment Act. The rule promulgated below increases the overall project size for which approval authority is delegated to certain SBA officers in the field from $2,000,000 to $3,000,000, from $1,500,000 to $2,000,000, and from $1,000,000 to $1,500,000 respectively. The share of the project cost funded by the Certified Development Company debenture that is guaranteed by SBA remains unchanged. The changes are being made to better facilitate the approval of development projects through appropriate use of SBA field personnel and resources.

Compliance with Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

For purpose of Executive Order 12291, SBA certifies that this rule is not a major rule because it merely defines Agency procedure.

For purpose of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the same reason that this is not a major rule.

For purposes of the Paperwork Reduction Act, SBA certified that this rule contains no new recordkeeping or reporting requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have federalism implications warranting the preparation of a Federalism Assessment.

SBA is publishing this rule governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(A).

**List of Subjects in 13 CFR Part 101**

Authority delegations (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

## PART 101—[AMENDED]

Accordingly, part 101 of title 13, chapter 1 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for part 101 continues to read as follows:

**Authority:** Secs. 4 and 5, Public Law 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Public Law 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Public Law 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3–2 is amended by revising part I section C, paragraph 2, to read as follows:

**§ 101.3–2 Delegation of authority to conduct program activities in field offices.**

* * * * *

Section C: Section 7(a)(13) Loans Approval Authority

* * * * *

2. Loans to a Local Development Company (SBI Act): To approve or decline loans to a local development company not exceeding the following amounts (SBA share) for each small business concern being assisted, within the project cost limitations shown below:

**Note:** Project cost applies to the cumulative SBA assistance to a small business concern and its affiliates and not to the additional assistance on which the action is being taken.

| | |
|---|---|
| a. Unlimited project cost: | |
| (1) Regional Administrator | $1,000,000 |
| b. Overall project cost not exceeding $2,500,000: | |
| (2) ARA/F&I | 1,000,000 |
| (3) District Director | 1,000,000 |
| (4) Deputy District Director | 1,000,000 |
| (5) ADA/F&I | 1,000,000 |
| (6) Branch Manager | 750,000 |
| (7) Assistant Branch Manager/F&I, Corpus Christi B.O. only | 750,000 |